IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.1070 OF 2005
WITH
CIVIL APPLICATION NO.1309 OF 2005
WITH
APPEAL FROM ORDER NOS.1071 & 1072 OF 2205
WITH
CIVIL APPLICATION NOS.1310 & 1311 OF 2005

Ms.Anandibai Bhupal Mugdum w/o. Bhupal Krishnaji Mugdum (since deceased) -deleted & Ors. ...Appellants.

Vs.

Shantaram Bhau Adure & Anr. ...Respondents.

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Suresh Gole for the Appellants.
Mr. Indu Prakash for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 28, 2005.

P.C.:

The impugned order of the City Civil Court dated 3rd October 2005 has been passed in an application under Order 39 Rule 2A of the Code of Civil Procedure, 1908. Rule 2-A empowers the court to pass an order in the event that there is a disobedience of any injunction granted or other order made under rule 1 or rule 2 or a breach of any of the terms on which the

injunction was granted or an order was made.

2. In the present case, a statement was made before the City Civil Court on behalf of the Appellants on 20th January 2003 when the Notice of Motion was taken out in the following terms:

> "Mr.Gole, Advocate for Defendants 1 to 5 made the statement on instructions that Defendant Nos.1 to 5 shall not create third party rights/interest in respect of 1/6th undivided share in the suit premises as described in Exhibit 'A' annexed to the Plaint, and also made the statement that the Defendants No.1 to 5 shall give 15 days notice in advance to the Plaintiff if they desire to create third party rights/interest in respect of remaining 5/6th undivided share in the said suit premises and said statement is accepted and taken on record."

After recording the aforesaid statement, the City Civil Court observed that: "In view of the said statement and its acceptance no ad-interim injunction (is) warranted" (emphasis supplied). A perusal of the aforesaid order dated 20th January 2003 would thus demonstrate that the statement that was made on behalf of the Appellants was duly accepted and it is in view of the acceptance of that statement that an ad-interim order of injunction was not passed.

3. On behalf of the Appellants, it was, however, submitted that the order dated 20th January 2003 is not an order of injunction under Order 39 Rule 1, and that therefore, the breach of the order was not punishable under Order 39 Rule 2A. Reliance was sought to be placed on the decision of a Learned Single Judge in **Mohanbhai Ishwarbhai Patel vs. Indian Council of Basic Education**, 2005(4) Mh. L.J. 433 for contending that the words "willful breach" of an undertaking given to the Court, do not find place in Rule 2A(1) of Order 39 of the Code of Civil Procedure, 1908.

4. There can be no dispute as regards the position that it was in view of the statement that was made on behalf of the Appellants that an ad-interim order of injunction was not passed. The fact that there was no order of injunction will, however, not be dispositive of whether the application under Order 39 Rule 2A was or was not maintainable, because Rule 2A(1) applies not only in the case of disobedience of an injunction granted, but inter alia where any other order is made under Rule 1 or Rule 2. The Defendants who made a statement before the Court in order to safeguard the rights of the Plaintiffs during the pendency of the

suit, cannot be heard to contend that a breach of that statement can be committed with impunity without invoking the consequence envisaged in sub-rule 2A of Order 39. In the present case, it is apparent that it was because of the statement that was made on behalf of the original Defendants that an order of injunction was not passed which is expressly clarified by the Learned Trial Judge in his order dated 28th January 2003. The Trial Court, however, accepted the statement. The statement which was made before the Court stands incorporated in the order passed by the Trial Court. The order of the Trial Court is clearly an order referable to Rule 2 of Order 39. Any other construction of Rule 2 will lead to a total abuse of the process and could be completely violative of the sanctity of judicial proceedings.

5. It was next urged that the statement which was made before the Trial Court on 28th January 2003 will not preclude the Appellants from managing their property and that the execution of a Leave and Licence Agreement in respect of three shops will not amount to the creation of any third party rights or interests as contemplated in the statement. The submission has only to be stated to be rejected. Admittedly, a Leave and Licence agreement

was entered into in respect of three shops after the order of the Trial Court dated 20th January 2003. The statement that third party rights/interests will not be created is wide enough to encompass a prohibition on the creation of a Leave and Licence agreement. The execution of a Leave and Licence agreement would create a right in favour of the licensee to occupy the premises during the term of the licence. Hence, the creation of the licence was in breach of the statement made. In these circumstances, the order of the Learned Trial Judge does not warrant interference. The appeals are dismissed.

6. In view of the disposal of the appeals, the Civil Applications do not survive and are accordingly disposed of.

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